IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No. 285 of 2006
in
Family Court Appeal No.11 of 2006

Mr.Santosh Narsingh Bhore ..Applicant

vs.

Mrs.Gayatri Santosh Bhore ..Respondent

Shri Abhijit Sawant for applicant.
Shri R.S.Bhalerao for respondent.

CORAM: S.B.MHASE AND
Smt.V.K.TAHILRAMANI JJ.
8th January, 2007

P.C.

1. Heard both sides.

2. Common judgment delivered in petition No.E-865 of 2001 and A-570 of 2003 is assailed by filing the Family Court Appeal no.11 of 2006. Petition No.E-865 of 2001 is by wife and children for getting the maintenance while petition no.A-570 of 2003 was filed by the applicant/husband against the respondent/wife for divorce. Both these petitions were heard together and decree for divorce was passed. However the Family Court further directed that suitable accommodation to accommodate the family of the respondent along with the children shall be provided by the applicant/husband and the applicant/husband

shall also pay maintenance at the rate of Rs.3000/- p.m. to the respondent/wife as observed in the body of the judgment. So far as the prayer for custody of the children is concerned, that has been rejected. The applicant/husband, therefore, has challenged that part of the order wherein he was directed to provide separate residence and maintenance to the respondent/wife and children. Appeal is already admitted. Now the Civil Application is preferred for stay of the order of maintenance and separate residence.

3. When the divorce has been granted it is the obligation of the husband to make a separate provision for the residence and accordingly prima facie the direction given for providing residence is thus justified one and it will be inappropriate to stay that part of the order. So far as the order of maintenance for the respondent/wife and children is concerned, the Court has directed the applicant/husband to pay Rs.3000/- p.m. The grievance of the learned Counsel for the applicant is that the applicant is a rickshaw plier and his income has been wrongly assessed by the Trial Court and, therefore, the maintenance amount during the pendency of the

appeal shall be reduced to Rs.800/- instead of Rs.3000/- p.m. We have perused the judgment. It is noticed from the judgment that the applicant/husband is a member of the joint family along with his father and S.T.D.booth was standing in the name of the applicant. However, in order to show that there is no income available from the said booth, during the pendency of the appeal, the applicant transferred the said booth in the name of his father and tried to make a show that booth is not being run and, there is no income from the said booth. It is further to be noted that he is plying six seater rickshaw. That shows that he is the owner of six seater rickshas and that the Trial Court has observed that in Pimpri Chinchwad area it is prohibited to run the six seater rickshaw. That means the six seater rickshaw is run by the applicant outside the Corporation area. What is income of that. That is not known and it was obligatory for the applicant to explain and lead appropriate evidence in respect of the income from the said rickshaw since he is in know of the facts of his own income.

4. Apart from that the house hold property is in the name of the applicant so also the

agricultural lands are also standing in the name of the joint family wherein the applicant is having interest. The property worth Rs.1,00,000/- and above has been purchased by his father. That shows that the applicant is from well todo family and a member of the middle class family. Taking all these facts into consideration the Family Court has evaluated the income of the applicant to Rs.8000/- to Rs.10,000/- We prima facie find that the said income has been rightly and reasonably assessed by the Family Court and out of that income the amount of Rs.3000/- has been directed to be paid to the respondent/wife and children. Taking into consideration the minimum standard of life, the price hikes of the essential commodities and bare necessities of a middle class family we find that the quantum of Rs.3000/- as fixed by the Family Court is just and proper and no interference at this stage is necessary. The Civil Application is without any merit. It is hereby rejected.

5. Learned Counsel for the applicant at this stage makes a request for expeditious hearing of the appeal, however, taking into consideration the facts and circumstances of the case as also the pendency of the matters

in this Court, the prayer for expeditious hearing is rejected.

(Smt.V.K.TAHILRAMANI J.) **(S.B.MHASE J.)**